



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2005

Ms. Lisa Ott Laky
Network Contracting Director
Austin Travis County MHMR Center
P.O. Box 3548
Austin, Texas 78764-3548

OR2005-01950A

Dear Ms. Laky:

This office issued Open Records Letter No. 2005-01950 (2005) on March 7, 2005. In that ruling, this office addressed a request for, among other information, a signed contract between the Austin Travis County Mental Health Mental Retardation Center (the "center") and its current insurance agent of record. In response to this request, the Center submitted to this office a copy of the winning proposal, but not a copy of an executed contract. This office subsequently ruled that section 552.104 of the Government Code authorized the center to withhold the submitted proposal, but that the center's failure to submit a copy of the requested contract required its release. *See generally* Gov't Code §§ 552.301, .302.

However, in a letter to this office dated March 17, 2005, you clarify that the submitted proposal was utilized as a contract with the winning agent, and that no separate contract document exists. Based on your representations, we agree that our conclusion in Open Records Letter No. 2005-01950 was erroneous. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on March 7, 2005. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act).

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219759.

The center received a request for copies of 1) the signed contract, with all attachments and exhibits, awarded to the current insurance agent of record for general business insurance; and

2) all current insurance policies in place for the center. You state that the center has no information responsive to the second category of information requested, but claim that the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code.¹ You also state, and provide documentation showing, that pursuant to section 552.305(d), the center notified interested third party Neiman Hanks Puryear ("NHP") of the center's receipt of the request and of the company's right to submit arguments as to why any portion of the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception claimed and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *See id.* However, this office has determined that in some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5.

In this instance, you state that the center "currently has out for bid a Request for Proposal for insurance agent of record services with respect to [the Center's] general business insurance." You further state that release of the submitted information would allow prospective bidders to gain a competitive advantage with access to the information in the submitted records. Upon review, we conclude that you have shown how the release of the submitted information would cause the center to suffer actual or specific harm in a particular competitive situation. Accordingly, you may withhold the submitted information under section 552.104.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

¹ The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opps. Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

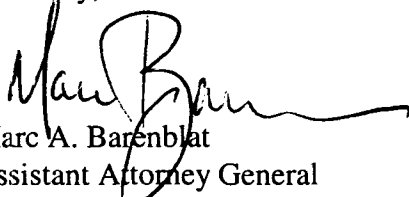
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jev

Ref: ID# 219759

Enc. Submitted documents

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